UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

LEMUEL BANNISTER & MELISSA MOORE **Plaintiffs,** **v.** **CONTRACT CALLERS INC.** **Defendant.**	**Case No. 7:16-cv-00349-RAJ-DC** **ANSWER TO COMPLAINT**

Defendant Contract Callers Inc. ("Defendant"), by and through its undersigned counsel, by way of its answer and affirmative defenses to the Complaint ("Complaint") of Plaintiffs Lemuel Bannister and Melissa Moore ("Plaintiffs") states as follows:

INTRODUCTION

1. Defendant admits that the allegations in Paragraph 1 purport to characterize the Complaint and, as such, no answer is required. To the extent an answer is required, Defendant denies the allegations contained in paragraph 1.

2. Defendant admits it is a debt collector. Defendant denies the remainder of the allegations contained in Paragraph 2.

3. Defendant lacks sufficient information to either admit or deny whether Plaintiffs revoked consent, and on that basis, denies same. Defendant denies the remainder of the allegations contained in Paragraph 3.

PARTIES

4. Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 4 of the Complaint.

5. Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint are admitted.

7. Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 7 of the Complaint, and on that basis, denies same.

JURISDICTION AND VENUE

8. Defendant asserts that Paragraph 8 of the Complaint states a legal conclusion, to which no response is required.

9. Defendant asserts that Paragraph 9 of the Complaint states a legal conclusion to which no response is required.

10. Defendant denies that Plaintiff's Class consists of at least one hundred members. Defendant asserts that the remainder of Paragraph 10 of the Complaint states a legal conclusion to which no response is required.

11. Defendant denies it committed wrongful acts. Defendant asserts that the remainder of Paragraph 11 of the Complaint states a legal conclusion to which no response is required.

The TCPA

12. The Telephone Consumer Protection Act ("TCPA") and accompanying legislative history speaks for itself.

13. The rulings and orders of the Federal Communication Commission ("FCC") speak for themselves.

14. The rulings and orders of the FCC speak for themselves.

15. The TCPA and its implementing regulations speak for themselves.

16. The rulings and orders of the FCC speak for themselves.

FACTUAL ALLEGATIONS

17. Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 17 of the Complaint, and on that basis, denies same.

18. Defendant denies that it caused Plaintiffs to experience a loss of privacy, or that they suffered the need for additional or extra measures to avoid telephone harassment and restore a sense of personal serenity, or maintain a sense of control over access to personal information/device, due to any alleged actions of Defendant. Defendant lacks sufficient information to either admit or deny the any remaining allegations contained in Paragraph 18 of the Complaint, and on that basis, denies same.

LEMUEL BANNISTER

19. Defendant admits it called a number ending in 4659 allegedly associated with Bannister. Defendant lacks sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 19 of the Complaint, and on that basis, denies same.

20. Defendant admits it called a number ending in 4659 allegedly associated with Bannister. Defendant lacks sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 20 of the Complaint, and on that basis, denies same.

21. The allegations contained in Paragraph 21 of the Complaint are denied.

22. The allegations contained in Paragraph 22 of the Complaint are denied.

23. Defendant denies that it used an ATDS. Defendant lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 23, and on that basis, denies same.

24. Defendant admits it called a number ending in 4659 allegedly associated with Bannister. Defendant denies that these calls were made using an ATDS. Defendant lacks

sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 24 of the Complaint, and on that basis denies same.

25. The allegations contained in Paragraph 25 of the Complaint are admitted.

26. The allegations contained in Paragraph 26 of the Complaint are admitted.

27. The allegations contained in Paragraph 27 of the Complaint are denied.

MELISSA MOORE

28. Defendant admits it called a number ending in 4106 allegedly associated with Moore. Defendant lacks sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 28 of the Complaint, and on that basis, denies same.

29. Defendant admits it called a number ending in 4106 allegedly associated with Moore. Defendant lacks sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 29 of the Complaint, and on that basis, denies same.

30. The allegations contained in Paragraph 30 of the Complaint are denied

31. Defendant denies it used an ATDS. Defendant lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 31, and on that basis, denies same.

32. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 32, and on that basis, denies same.

33. Defendant admits it called a number ending in 4106 allegedly associated with Moore. Defendant denies that these calls were made using an ATDS. Defendant lacks sufficient information to either admit or deny the remainder of the allegations contained in Paragraph 33 of the Complaint.

34. The allegations contained in Paragraph 34 of the Complaint are admitted.

35. The allegations contained in Paragraph 35 of the Complaint are admitted.

36. The allegations contained in Paragraph 36 of the Complaint are denied.

CLASS ALLEGATIONS

37. Defendant admits that Plaintiffs' claim to bring this action on behalf of themselves and on behalf of all others similarly situated ("the Class"). Defendant denies that Plaintiffs have a viable Robocall Class and/or DNC Class. Defendant denies any remaining allegations contained in Paragraph 37 of the Complaint.

38. Defendant admits that Plaintiffs state the following persons are excluded from the class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and its current or former employees, officers, and directors; (3) Plaintiffs' counsel and Defendant's counsel; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant has been fully and finally adjudicated and/or released. To the extent that a further answer is required, Defendant denies any remaining allegations contained in Paragraph 38 of the Complaint.

39. Defendant admits that the allegations in Paragraph 39 purport to characterize the relief sought by the Complaint, and as such, no answer is required. To the extent that a further answer is required, Defendant denies any remaining allegations contained in Paragraph 39 of the Complaint.

40. Defendant admits that Plaintiffs' claim they assert the right to expand the class definition. Defendant denies that Plaintiffs have a viable class. To the extent that a further

answer is required, Defendant denies any remaining allegations contained in Paragraph 40 of the Complaint.

41. The allegations contained in Paragraph 41 of the Complaint are denied.

B. NUMEROSITY

42. The allegations contained in Paragraph 42 of the Complaint are denied.

43. The allegations contained in Paragraph 43 of the Complaint are denied.

C. COMMONALITY AND PREDOMINANCE

44. The allegations contained in Paragraph 44 of the Complaint are denied.

45. The allegations contained in Paragraph 45 of the Complaint are denied.

D. TYPICALITY

46. The allegations contained in Paragraph 46 of the Complaint are denied.

47. The allegations contained in Paragraph 47 of the Complaint are denied.

E. ADEQUATE REPRESENTATION

48. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 48, and on that basis, denies same.

49. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 49, and on that basis, denies same.

F. POLICIES GENERALLY APPLICABLE TO THE CLASS

50. The allegations contained in Paragraph 50 of the Complaint are denied.

51. The allegations contained in Paragraph 51 of the Complaint are denied.

G. SUPERIORITY

52. The allegations contained in Paragraph 52 of the Complaint are denied.

53. The allegations contained in Paragraph 53 of the Complaint are denied.

54. The allegations contained in Paragraph 54 of the Complaint are denied.

55. The allegations contained in Paragraph 55 of the Complaint are denied.

56. The allegations contained in Paragraph 56 of the Complaint are denied.

FIRST CAUSE OF ACTION

16[1]. Defendant incorporates by reference its answers to the allegations in the preceding paragraphs.

17. The allegations contained in this paragraph of the Complaint are denied.

18. The allegations contained in this paragraph of the Complaint are denied.

19. The allegations contained in this paragraph of the Complaint are denied.

SECOND CAUSE OF ACTION

16[2]. Defendant incorporates by reference its answers to the allegations in the preceding paragraphs.

17. The allegations contained in this paragraph of the Complaint are denied.

18. The allegations contained in this paragraph of the Complaint are denied.

19. The allegations contained in this paragraph of the Complaint are denied.

ATTORNEYS FEES

20. Defendant incorporates by reference its answers to the allegations in the preceding paragraphs.

21. The allegations contained in this paragraph of the Complaint are denied.

JURY DEMAND

22. Defendant admits that Plaintiffs demand a jury trial.

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[1] Plaintiffs' paragraph numbering jumps from 56 to 16.
[2] Plaintiffs' paragraph numbering jumps from 19 to 16.

ANSWER TO PRAYER FOR RELIEF

Defendant states that no answer is required to Plaintiffs' prayer for relief. To the extent an answer is required, Defendant denies the allegations in the prayer for relief and denies that Plaintiffs have any basis for obtaining any relief from Defendant, as requested in their Complaint or otherwise.

AFFIRMATIVE DEFENSES

Defendant alleges and asserts the following defenses in answer to the allegations to the complaint, undertaking the burden of proof only as to those defenses deemed affirmatively defenses by law, regardless of how the defenses are denominated below.

FIRST AFFIRMATIVE DEFENSE

1. Plaintiffs' Complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a valid cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

2. Based on current information and belief, Defendant asserts that the causes of action alleged in Plaintiffs' Complaint are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

3. Defendant asserts that it did not employ an automatic telephone dialing system as defined by the TCPA to call Plaintiffs and/or their putative class.

FOURTH AFFIRMATIVE DEFENSE

4. As a separate, affirmative defense, Defendant asserts that the causes of action alleged in Plaintiffs' Complaint are barred, in whole or in part, by the doctrines of estoppel, waiver, laches, unclean hands, and other equitable doctrines.

FIFTH AFFIRMATIVE DEFENSE

5. As a separate, affirmative defense, Defendant asserts that it did not engage in any conduct that was outrageous, intentional and malicious or done with reckless disregard with respect to Plaintiffs and/or their putative class. Defendant also alleges that it never engaged in any knowing, willful or fraudulent conduct with respect to Plaintiffs and/or their putative class.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs' damages, if any, are a result of their failure to take reasonable steps to mitigate their alleged damages. Accordingly, Plaintiffs are not entitled to recover any damages, or any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided.

SEVENTH AFFIRMATIVE DEFENSE

7. As a separate, affirmative defense, the Complaint, and each cause of action alleged therein against Defendant, is barred because Defendant was privileged and justified, by statute and by common law, in making the alleged statements and representations, if any, including but not limited to statutes 15 U.S.C. § 1692k(c).

EIGHTH AFFIRMATIVE DEFENSE

8. As a separate, affirmative defense, assuming arguendo that this Defendant violated a statute alleged in the Complaint, which presupposition Defendant denies, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

NINTH AFFIRMATIVE DEFENSE

9. As a separate, affirmative defense, Defendant asserts that it had consent to call the phone numbers at issue, either via prior express consent or implied consent.

TENTH AFFIRMATIVE DEFENSE

10. As a separate, affirmative defense, Defendant asserts that the issues raised in Plaintiffs' Complaint are currently the subject of appeals in the D.C. Circuit Court of Appeals.

ELEVENTH AFFIRMATIVE DEFENSE

11. As a separate, affirmative defense, Defendant asserts that Plaintiffs assumed the risk of the calls made by Defendant or alleged to be made on Defendant's behalf.

TWELFTH AFFIRMATIVE DEFENSE

12. Defendant and its agents, if any, acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by them at the time they so acted; Defendant asserts that they acted lawfully and within their legal rights, with a good faith belief in the exercise of those rights, and in the furtherance of legitimate business purpose. Further, Defendant acted in good faith in the honest belief that the acts, conduct and communications, if any, of Defendant were justified under the circumstances based on information reasonably available to this answering Defendant, including reliance on information provided by the creditor. Accordingly, Plaintiffs and/or their putative class are barred from any recovery in this action.

THIRTEENTH AFFIRMATIVE DEFENSE

13. As a separate affirmative defense, Defendant asserts that Plaintiffs' claims are barred, in whole or in part, because class members are not identifiable and because this case is not appropriate for class treatment, including, but not limited to, lack of typicality, ascertainability, predominance of individualized issues, and superiority.

FOURTEENTH AFFIRMATIVE DEFENSE

14. As a separate affirmative defense, Defendant reserves the right to compel arbitration.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Any damages that Plaintiffs or the putative class may recover against Defendant in this Action must be offset against all amounts owed to Defendant

SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiffs and/or their putative class lack standing to assert a claim against Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Plaintiffs and/or their putative class lack subject matter jurisdiction.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Defendant substantially complied with the statute at issue.

NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiffs and/or their putative class suffered no damages or injury.

TWENTIETH AFFIRMATIVE DEFENSE

20. To the extent applicable, Defendant asserts that the FCC's 2015 Ruling applies the one call safe harbor to include the first call to any cell phone where the caller reasonably believed it had prior express consent to call the phone.

RESERVATION OF RIGHTS

Defendant reserves the right to amend its answer and claims herein by adding additional parties, affirmative defenses, counterclaims, cross-claims, and/or third party claims, as additional investigation, discovery or circumstances warrant.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant prays as follows:

1. That Plaintiffs take nothing by the Complaint.
2. That the Complaint be dismissed with prejudice;
3. That Defendant recovers its costs and expenses of suit;

4. That judgment be entered in favor of Defendant, and against Plaintiffs, on all counts in which claims have been asserted against Defendant, for its attorneys' fees and costs incurred herein, and for such further relief as the court deems just and equitable.

Respectfully submitted,

By: /s/ Lee H. Staley

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CERTIFICATE OF SERVICE

I certify that on the 20th day of January, 2017, a true and correct copy of the foregoing was served was served via the Court's ECF system, which constitutes service on all parties.

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